

ASSEMBLY BILL

No. 2244

Introduced by Assembly Member Gatto

February 18, 2016

An act to amend Section 1033.5 of the Code of Civil Procedure, and to amend Section 6159 of the Government Code, relating to court fees.

LEGISLATIVE COUNSEL'S DIGEST

AB 2244, as introduced, Gatto. Court fees: electronic filing.

Existing law authorizes a court, subject to Judicial Council approval, to accept a credit card, debit card, or electronic funds transfer in payment of designated obligations, including filing fees and other court costs. Existing law authorizes a court, subject to Judicial Council approval, to impose a fee for the use of a credit or debit card or electronic funds transfer, not to exceed the costs incurred by the court in providing for payment by credit or debit card or electronic funds transfer.

This bill would additionally authorize an agent of the court to impose a fee, subject to Judicial Council approval, for the use of a credit or debit card or electronic funds transfer, not to exceed the costs incurred by the court in providing for payment by credit or debit card or electronic funds transfer.

Existing law also enumerates costs that a prevailing party may recover in a civil action.

This bill would authorize a prevailing party to recover electronic filing service provider fees as costs, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1033.5 of the Code of Civil Procedure is amended to read:

1033.5. (a) The following items are allowable as costs under Section 1032:

(1) Filing, motion, and jury fees.

(2) Juror food and lodging while they are kept together during trial and after the jury retires for deliberation.

(3) (A) Taking, video recording, and transcribing necessary depositions, including an original and one copy of those taken by the claimant and one copy of depositions taken by the party against whom costs are allowed.

(B) Fees of a certified or registered interpreter for the deposition of a party or witness who does not proficiently speak or understand the English language.

(C) Travel expenses to attend depositions.

(4) Service of process by a public officer, registered process server, or other means, as follows:

(A) When service is by a public officer, the recoverable cost is the fee authorized by law at the time of service.

(B) If service is by a process server registered pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code, the recoverable cost is the amount actually incurred in effecting service, including, but not limited to, a stakeout or other means employed in locating the person to be served, unless those charges are successfully challenged by a party to the action.

(C) When service is by publication, the recoverable cost is the sum actually incurred in effecting service.

(D) When service is by a means other than that set forth in subparagraph (A), (B), or (C), the recoverable cost is the lesser of the sum actually incurred, or the amount allowed to a public officer in this state for that service, except that the court may allow the sum actually incurred in effecting service upon application pursuant to paragraph (4) of subdivision (c).

(5) Expenses of attachment including keeper's fees.

(6) Premiums on necessary surety bonds.

(7) Ordinary witness fees pursuant to Section 68093 of the Government Code.

- 1 (8) Fees of expert witnesses ordered by the court.
- 2 (9) Transcripts of court proceedings ordered by the court.
- 3 (10) Attorney's fees, when authorized by any of the following:
- 4 (A) Contract.
- 5 (B) Statute.
- 6 (C) Law.
- 7 (11) Court reporter fees as established by statute.
- 8 (12) Court interpreter fees for a qualified court interpreter
- 9 authorized by the court for an indigent person represented by a
- 10 qualified legal services project, as defined in Section 6213 of the
- 11 Business and Professions Code or a pro bono attorney as defined
- 12 in Section 8030.4 of the Business and Professions Code.
- 13 (13) Models and enlargements of exhibits and photocopies of
- 14 exhibits may be allowed if they were reasonably helpful to aid the
- 15 trier of fact.
- 16 (14) *Electronic filing service provider fees. If a court requires*
- 17 *or orders a party to file and serve documents electronically with*
- 18 *the court, the recoverable costs are those actually incurred to*
- 19 *electronically file, serve, and host documents through a certified*
- 20 *electronic filing service provider.*
- 21 ~~(14)~~
- 22 (15) Any other item that is required to be awarded to the
- 23 prevailing party pursuant to statute as an incident to prevailing in
- 24 the action at trial or on appeal.
- 25 (b) The following items are not allowable as costs, except when
- 26 expressly authorized by law:
- 27 (1) Fees of experts not ordered by the court.
- 28 (2) Investigation expenses in preparing the case for trial.
- 29 (3) Postage, telephone, and photocopying charges, except for
- 30 exhibits.
- 31 (4) Costs in investigation of jurors or in preparation for voir
- 32 dire.
- 33 (5) Transcripts of court proceedings not ordered by the court.
- 34 (c) ~~Any~~ An award of costs shall be subject to the following:
- 35 (1) Costs are allowable if incurred, whether or not paid.
- 36 (2) Allowable costs shall be reasonably necessary to the conduct
- 37 of the litigation rather than merely convenient or beneficial to its
- 38 preparation.
- 39 (3) Allowable costs shall be reasonable in amount.

(4) Items not mentioned in this section and items assessed upon application may be allowed or denied in the court's discretion.

(5) ~~When any~~ *If a* statute of this state refers to the award of "costs and attorney's fees," attorney's fees are an item and component of the costs to be awarded and are allowable as costs pursuant to subparagraph (B) of paragraph (10) of subdivision (a). Any claim not based upon the court's established schedule of attorney's fees for actions on a contract shall bear the burden of proof. Attorney's fees allowable as costs pursuant to subparagraph (B) of paragraph (10) of subdivision (a) may be fixed as follows: (A) upon a noticed motion, (B) at the time a statement of decision is rendered, (C) upon application supported by affidavit made concurrently with a claim for other costs, or (D) upon entry of default judgment. Attorney's fees allowable as costs pursuant to subparagraph (A) or (C) of paragraph (10) of subdivision (a) shall be fixed either upon a noticed motion or upon entry of a default judgment, unless otherwise provided by stipulation of the parties.

Attorney's fees awarded pursuant to Section 1717 of the Civil Code are allowable costs under Section 1032 of this code as authorized by subparagraph (A) of paragraph (10) of subdivision (a).

SEC. 2. Section 6159 of the Government Code is amended to read:

6159. (a) The following definitions apply for purposes of this section:

(1) "Credit card" means ~~any~~ *a* card, plate, coupon book, or other credit device existing for the purpose of being used from time to time upon presentation to obtain money, property, labor, or services on credit.

(2) "Card issuer" means ~~any~~ *a* person, or his or her agent, who issues a credit card and purchases credit card drafts.

(3) "Cardholder" means ~~any~~ *a* person to whom a credit card is issued or any person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person.

(4) "Debit card" means a card or other means of access to a debit card cardholder's account that may be used to initiate electronic funds transfers from that account.

(5) "Draft purchaser" means ~~any~~ *a* person who purchases credit card drafts.

1 (6) “Electronic funds transfer” means ~~any~~ a method by which
2 a person permits electronic access to, and transfer of, money held
3 in an account by that person.

4 (b) Subject to subdivisions (c) and (d), a court, city, county, city
5 and county, or other public agency may authorize the acceptance
6 of a credit card, debit card, or electronic funds transfer for any of
7 the following:

8 (1) The payment for the deposit of bail for any offense not
9 declared to be a felony or for ~~any~~ a court-ordered fee, fine,
10 forfeiture, penalty, assessment, or restitution. Use of a card or
11 electronic funds transfer pursuant to this paragraph may include
12 a requirement that the defendant be charged ~~any~~ a administrative
13 fee charged by the company issuing the card or processing the
14 account for the cost of the transaction.

15 (2) The payment of a filing fee or other court fee.

16 (3) The payment of ~~any~~ towage or storage costs for a vehicle
17 that has been removed from a highway, or from public or private
18 property, as a result of parking violations.

19 (4) The payment of child, family, or spousal support, including
20 reimbursement of public assistance, related fees, costs, or penalties,
21 with the authorization of the cardholder or accountholder.

22 (5) The payment for services rendered by ~~any~~ a city, county,
23 city and county, or other public agency.

24 (6) The payment of ~~any~~ a fee, charge, or tax due a city, county,
25 city and county, or other public agency.

26 (7) The payment of ~~any~~ moneys payable to the sheriff pursuant
27 to a levy under a writ of attachment or writ of execution. If the use
28 of a card or electronic funds transfer pursuant to this paragraph
29 includes any administrative fee charged by the company issuing
30 the card or processing the account for the cost of the transaction,
31 that fee shall be paid by the person who pays the money to the
32 sheriff pursuant to the levy.

33 (8) The payment of a donation, gift, bequest, or devise made to
34 or in favor of a county, or to or in favor of the board of supervisors
35 of a county, pursuant to Section 25355.

36 (c) A court desiring to authorize the use of a credit card, debit
37 card, or electronic funds transfer pursuant to subdivision (b) shall
38 obtain the approval of the Judicial Council. A city desiring to
39 authorize the use of a credit card, debit card, or electronic funds
40 transfer pursuant to subdivision (b) shall obtain the approval of its

1 city council. Any other public agency desiring to authorize the use
2 of a credit card, debit card, or electronic funds transfer pursuant
3 to subdivision (b) shall obtain the approval of the governing body
4 that has fiscal responsibility for that agency.

5 (d) After approval is obtained, a contract may be executed with
6 one or more credit card issuers, debit card issuers, electronic funds
7 transfer processors, or draft purchasers. The contract shall provide
8 for the following matters:

9 (1) The respective rights and duties of the court, city, county,
10 city and county, or other public agency and card issuer, funds
11 processor, or draft purchaser regarding the presentment,
12 acceptability, and payment of credit and debit card drafts and
13 electronic funds transfer requests.

14 (2) The establishment of a reasonable means by which to
15 facilitate payment settlements.

16 (3) The payment to the card issuer, funds processor, or draft
17 purchaser of a reasonable fee or discount.

18 (4) Any other matters appropriately included in contracts with
19 respect to the purchase of credit and debit card drafts and
20 processing of electronic funds transfer requests as may be agreed
21 upon by the parties to the contract.

22 (e) The honoring of a credit card, debit card, or electronic funds
23 transfer pursuant to subdivision (b) hereof constitutes payment of
24 the amount owing to the court, city, county, city and county, or
25 other public agency as of the date the credit or debit card is honored
26 or the electronic funds transfer is processed, provided the credit
27 or debit card draft is paid following its due presentment to a card
28 issuer or draft purchaser or the electronic funds transfer is
29 completed with transfer to the agency requesting the transfer.

30 (f) If ~~any~~ a credit or debit card draft is not paid following due
31 presentment to a card issuer or draft purchaser or is charged back
32 to the court, city, county, city and county, or other public agency
33 for any reason, any record of payment made by the court, city, or
34 other public agency honoring the credit or debit card shall be void.
35 If ~~any~~ an electronic funds transfer request is not completed with
36 transfer to the agency requesting the transfer or is charged back
37 to the agency for any reason, any record of payment made by the
38 agency processing the electronic funds transfer shall be void. ~~Any~~
39 A receipt issued in acknowledgment of payment shall also be void.

1 The obligation of the cardholder or accountholder shall continue
2 as an outstanding obligation as if no payment had been attempted.

3 (g) If a credit card, debit card draft, electronic funds transfer,
4 or other payment offered in payment is returned without payment,
5 for any reason, a reasonable charge for the charge back or return,
6 not to exceed the actual costs incurred by the public agency, may
7 be imposed to recover the public agency's processing and
8 collection costs. This charge may be added to, and become part
9 of, any underlying obligation other than an obligation which
10 constitutes a lien on real property, and a different method of
11 payment for that payment and future payments by this person may
12 be prescribed.

13 (h) Notwithstanding Title 1.3 (commencing with Section 1747)
14 of Part 4 of Division 3 of the Civil Code, a court *or agent of the*
15 *court*, city, county, city and county, or any other public agency
16 may impose a fee for the use of a credit or debit card or electronic
17 funds transfer, not to exceed the costs incurred by the agency in
18 providing for payment by credit or debit card or electronic funds
19 transfer. These costs may include, but shall not be limited to, the
20 payment of fees or discounts as specified in paragraph (3) of
21 subdivision (d). ~~Any~~ A fee imposed by a court *or agent of the court*
22 pursuant to this subdivision shall be approved by the Judicial
23 Council. ~~Any~~ A fee imposed by any other public agency pursuant
24 to this subdivision for the use of a credit or debit card or electronic
25 funds transfer shall be approved by the governing body responsible
26 for the fiscal decisions of the public agency.

27 (i) Fees or discounts provided for under paragraph (3) of
28 subdivision (d) shall be deducted or accounted for prior to any
29 statutory or other distribution of funds received from the card
30 issuer, funds processor, or draft purchaser to the extent not
31 recovered from the cardholder or accountholder pursuant to
32 subdivision (h).

33 (j) The Judicial Council may enter into a master agreement with
34 one or more credit or debit card issuers, funds processors, or draft
35 purchasers for the acceptance and payment of credit or debit card
36 drafts and electronic funds transfer requests received by the courts.
37 ~~Any~~ A court may join in any of these master agreements or may

- 1 enter into a separate agreement with a credit or debit card issuer,
- 2 funds processor, or draft purchaser.

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